



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0177]

[Docket No. 2011-0076; Sequence 4]

Submission for OMB Review; Comment Request; Reporting

Executive Compensation and First-Tier Subcontract Awards

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement for Reporting Executive Compensation and First-tier Subcontract Awards. An initial notice soliciting public comments on the information collection was published in the Federal Register at 75 FR 39414, on July 8, 2010, as part of an interim rule under FAR case 2008-039. The public comments received on only the information collection are addressed in this notice under, "Supplementary Information." Comments on the rest of the interim rule will be addressed with the issuance of the final rule.

Public comments are particularly invited on: whether

this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit comments identified by Information Collection 9000-0177, Reporting Executive Compensation and First-tier Subcontract Awards, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit

a Comment" that corresponds with "Information Collection 9000-0177, Reporting Executive Compensation and First-tier

Subcontract Awards." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0177, Reporting Executive Compensation and First-tier Subcontract Awards" on your attached document.

- Fax: 202-501-4067
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, Washington, DC 20417.
- Instructions: Please submit comments only and cite "Information Collection 9000-0177, Reporting Executive Compensation and First-tier Subcontract Awards," in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, Contract Policy Division, at telephone 202-219-1813 or via e-mail to william.clark@gsa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Federal Funding Accountability and Transparency Act ("Transparency Act"), Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252, was enacted to reduce "wasteful and unnecessary spending" by requiring that OMB establish a free, public, online database containing full disclosure of all Federal contract award information for awards of \$25,000 or more.

DoD, GSA, and NASA published an interim rule for public comment at 75 FR 39414, on July 8, 2010, to implement the Transparency Act reporting requirements. The rule requires the insertion of FAR clause 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards, in solicitations and contracts (including commercial item contracts and commercially available off-the-shelf (COTS) item contracts) of \$25,000 or more.

The clause at 52.204-10 requires, unless otherwise directed by the contracting officer, for first-tier subcontracts valued at \$25,000 or more, prime contractors to report first-tier subcontract award data (e.g., name, amount, address, etc.). If the contractor in the previous tax year had gross income, from all sources, under \$300,000, the contractor is exempt from the requirement to report first-tier subcontractor awards. If a first-tier subcontractor in the previous tax year had gross income

from all sources under \$300,000, the contractor does not need to report awards to that first-tier subcontractor. Contractors will provide these subcontract reports to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) (<http://www.fsrs.gov>). DoD, GSA, and NASA note that there is pre-population of some data in FSRS from other Government systems.

The clause at 52.204-10 also requires a contractor to report in the Central Contractor Registration (CCR) database at <http://www.ccr.gov>, the names and total compensation of each of its five most highly compensated executives for the contractor's preceding completed fiscal year. Contractors and first-tier subcontractors are not required to report the total compensation information required by the rule, unless –

(i) In the contractor or subcontractor's preceding fiscal year, the contractor or subcontractor received –

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenue from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

II. Analysis of Public Comments

Comments were received on the information collection requirement estimated annual burden as well as the interim rule. DoD, GSA, and NASA have revised the information collection requirement estimated annual burden as a result of analysis of the public comments. The comments on the rest of the interim rule will be addressed with the issuance of the final rule. The analysis of public comments is summarized as follows:

Comment: A respondent commented that DoD, GSA, and NASA significantly underestimated the costs associated with the reporting requirements, and failed to include in the calculations of such costs the time required to research and obtain the required information. A respondent expressed concern about the overhead rate of 36.35 percent

used in the "per hour" calculations. The respondent commented that a rate of 90 percent is more accurate as the work will be performed by corporate personnel with both fringe and facility components. Additionally, the respondent indicated that while some subcontractors will be excluded from reporting compensation, prime contractors will be obligated to conduct research in order to ensure that subcontractor exclusion determinations are accurate. Several respondents opined that DoD, GSA, and NASA's determination that prime contractors will require only 1 hour to comply with the reporting requirements does not anticipate the time and costs for complying with the clause.

Response: DoD, GSA, and NASA have concluded that the reporting requirements are, for the most part, annual submissions, hence; the preparation of the reports does not require a full time position. A company officer or division manager or a company subcontract administrator, as part of their official duties, would have the professional skills necessary for the preparation of the report. DoD, GSA, and NASA point out that the overhead rate consist of employee paid benefits, time off, along with payroll taxes and other staff employment benefit-related expenses (direct personnel expense); not the cost of heating, lighting,

rent, etc., (general and administrative expenses) which would be ongoing operating costs incurred by prime contractors notwithstanding the reporting requirements. Based on this information, DoD, GSA and NASA have determined that while the overhead rate of 36.35 percent used in the "per hour" calculations may appear to be low, the overhead rate of 36.35 is adequate for the estimated burden calculation.

DoD, GSA, and NASA agree that prime contractors will require additional time to meet the reporting requirements, as such, the combined "Preparation Hours per Response" time are revised from "1" hour to "2.12" hours. DoD, NASA and GSA note that a number of aspects of the clause may lessen the reporting requirement on businesses, including exceptions in the clause that exclude some contractors from reporting the information, and pre-population of data in FSRS from other Government systems.

Comment: Several respondents question the estimated cost to the public of \$21 million to report subcontract award data, and commented that the cost is not sufficient to meet the Congressional intent of a free public website since the expense will borne by the taxpayer. Another respondent suggested that the Government consider the cost benefit of implementing the rule.

Response: DoD, GSA, and NASA have revised the combined estimated cost to the public to be \$36,478,804. While the respondent did not provide an alternative estimate or a basis to support its contention, the revised estimate is based on a re-evaluation of the time to meet the reporting requirement and Fiscal Year 2010 (FY10) FPDS data collected for the applicable contract actions.

The reporting is required to implement the Transparency Act that was mandated by Congress. The Paperwork Burden Act information collection analysis was performed to determine the administrative burden on the public including the cost associated with collecting and reporting on the requirement.

III. Annual Reporting Burden

DoD, GSA, and NASA estimate the annual burden associated with reporting requirements of FAR 52.204-10 to be \$36,478,804.

1. Reporting first-tier subcontract award information.

The FY10 Federal Procurement Data System (FPDS) data collected for new contract actions valued at \$25,000 or greater, indicated that there were 76,889 contractors with

unique DUNS numbers. DoD, GSA, and NASA estimate that based on the exemptions in the rule (e.g., contractors in the previous tax year with less than \$300,000 in gross income do not have to report), seventy-five percent of the contractors with actions valued at \$25,000 or greater would be subject to the reporting requirements. The burden to report the subcontractor award information (e.g., name, amount, address, etc.) under FAR 52.204-10 is estimated to average 2 hours per response for a prime contractor and approximately three first-tier subcontractors per prime contractor. We estimate the total annual public cost burden for these elements to be \$31,370,848 based on the following:

Respondents: 230,668

Responses per respondent: 1

Total annual responses: 230,668

Preparation hours per response: 2

Total response burden hours: 461,336

Average hourly wages (\$50.00 + 36.35% overhead.

Rounded to nearest dollar): \$68.00

Estimated cost to the public: \$31,370,848

2. Reporting executive compensation. There were 625,884 active registrants in CCR as of January 1, 2012. Of the 625,884 total active registrants, 620,777 were

screened out by two questions supporting the rule's requirements, i.e., didn't have 80% or more of their annual gross revenue in U.S. Federal contracts, grants, and/or cooperative agreements and didn't make more than \$25 million in annual gross revenue, or did have 80% or \$25 million from Federal contracts/grants/cooperative agreements, but the public already had access to the information. DoD, GSA, and NASA estimate that it would require those 620,777 registrants 0.10 hours per response, for a total of 62,078 response hours.

A total of 5,107 CCR registrants have entered actual values for their top five most highly compensated executives. Additionally, there were 90 registrants that provided their executive compensation responses to FSRS rather than CCR. So, the total additional burden imposed to respond to all three questions posed in the reporting tool is 5,197. DoD, GSA, and NASA estimate that it would require those 5,197 registrants 2.5 hours to provide the information required, for a total of 12,993 response hours.

Therefore, DoD, GSA, and NASA estimate that the total population of respondents is 625,974, and the total estimated response hours is 75,071, resulting in a weighted average of 0.12 hours per respondent for executive compensation reporting.

The Councils estimate the total annual public cost burden for this element to be \$5,107,956 based on the following:

Respondents: 625,974 (subcontractors and prime contractors).

Responses per respondent: 1

Total annual responses: 625,974

Preparation hours per response: 0.12

Total response burden hours: 75,117

Average hourly wages: (\$50.00+36.35%overhead): \$68.00

Estimated cost to the public: \$5,107,956

Based on the above calculations, DoD, GSA, and NASA estimate the total annual burden associated with reporting requirements of FAR 52.204-10 to be \$36,478,804. The reporting burden includes the time for reviewing instructions, and reporting the data. It does not cover the time required to conduct research or the time to obtain the information for the data elements.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE, Washington, DC 20417, telephone 202-501-4755. Please cite OMB Control No. 9000-0177, Reporting Executive Compensation and First-tier Subcontract Awards, in all correspondence.

Dated: April 11, 2012

Laura Auletta,
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Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy,
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